

APPENDIX

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MICHAEL ROSE

Supreme Court of the United States

OCTOBER TERM, 1972

No. 72-1328

UNITED STATES OF AMERICA,

Petitioner

—v.—

IRVING KAHN and MINNIE KAHN

**ON WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE SEVENTH CIRCUIT**

**PETITION FOR CERTIORARI FILED MARCH 30, 1973
CERTIORARI GRANTED MAY 14, 1973**

Supreme Court of the United States

OCTOBER TERM, 1972

No. 72-1328

UNITED STATES OF AMERICA,

Petitioner

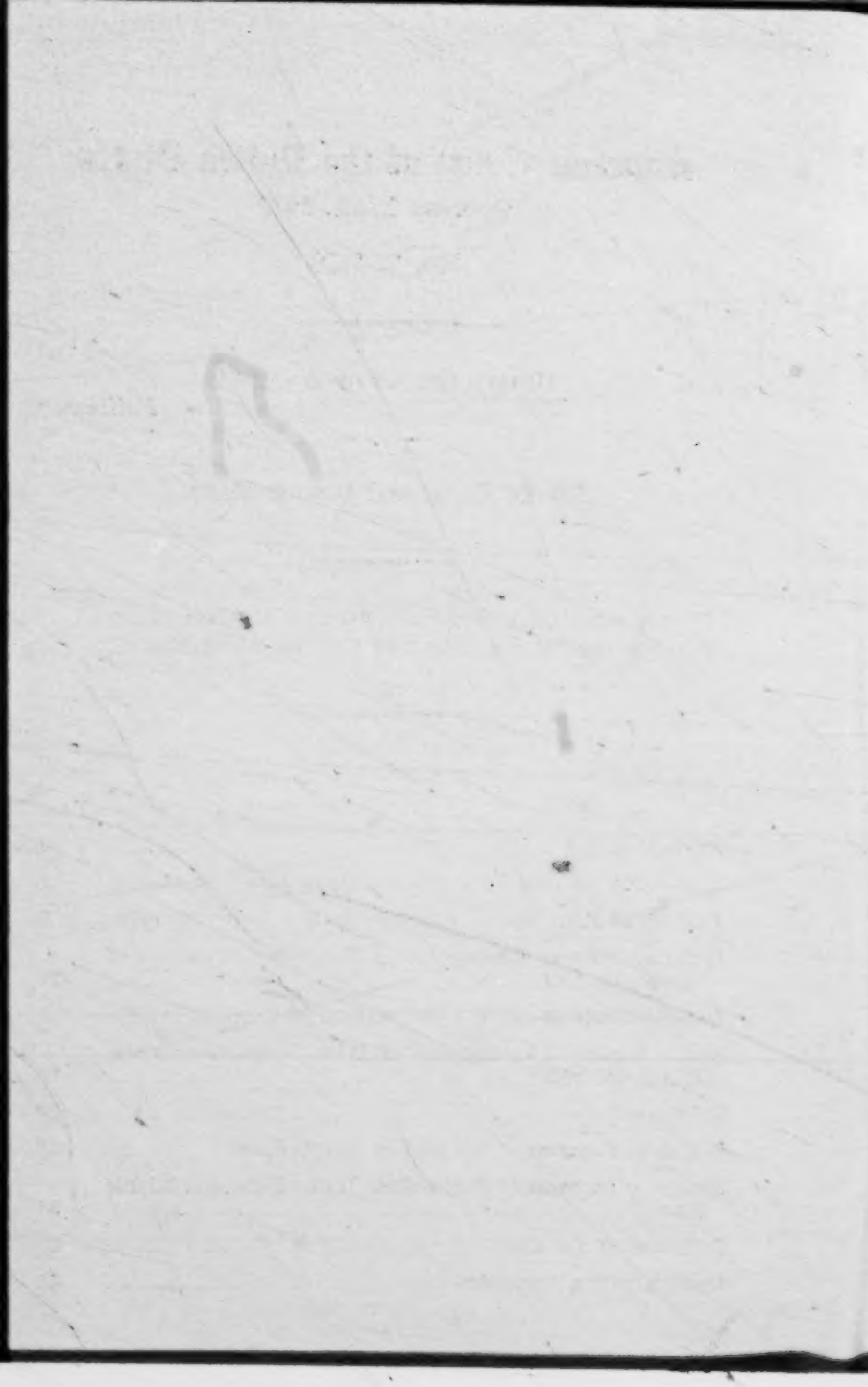
—v.—

IRVING KAHN and MINNIE KAHN

ON WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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DOCKET ENTRIES

- 2/24/71 Filed Indictment
- 2/24/71 Filed Designation
- 2/24/71 Order Indictment returned in open Court, bench warrant to issue as to both defendants, set bond at \$4,500.00 to each defendant—Robson J
- 2/24/71 Issued Bench warrant and copies of Indictment to Marshal's office
- 3/ 3/71 Defendants appears with counsel and acknowledges receipt of the indictment and waives reading of same, defendants given twenty days to file all motions. Defendants enter pleas of not guilty. Government is given five days to answer. Order cause continued to April 7 1971 at 10 AM for decision. Appearance of the defendants is waived at that time—Lynch J
notices mailed 3-3-71
- 3/16/71 Filed warrant for arrest returned executed
- 3/31/71 Filed stipulation
- 3/30/71 Enter order granting stipulation to extend time to file pre-trial motions to and including May 1, 1971—Lynch J
notices mailed 4-5-71
- 4/27/71 Filed motion to suppress
- 4/27/71 Filed motion to dismiss the indictment
- 4/30/71 Enter order granting government's motion for extension of time to file answer to pre-trial motion until May 10, 1971—Lynch, J.
Mailed notices 5-5-71
- 4/30/71 Enter order granting government's motion for extension of time to file answer to pre-trial motion until May 10, 1971—Lynch, J.
Mailed notices 5-5-71
- 5/11/71 Filed Government's Answer to defendants motion to dismiss indictment

- 5/11/71 Filed Government's Answer to defendants motion to suppress
- 5/21/71 It is ordered that this cause is set for a status report on May 26, 1971 at 2 PM—Mc Millen, J notices mailed 5-24-71
- 5/21/71 Order this cause to be reassigned to Judge Mc Millen, Executive Committee
- 5/26/71 Defendant given until June 9 1971 in which to reply to governments answer to defendants motions to dismiss indictment and defendants motion to suppress motions are taken under advisement—McMillen, J notices mailed 6-2-71
- 6/17/71 Enter order allowing motion for leave to file defendants reply to answer of Government to motion to suppress instant—McMillen notices mailed 6-21-71
- 10/22/71 On the joint and several motions of the defendants to dismiss the indictment. It is hereby ordered that defendants' motions are denied—Draft—McMillen, J. Mailed notices 10-26-71
- 11/ 2/71 Motion of the defendants to suppress the results of electronic surveillance granted. Case set for a status report on November 8, 1971 at 10 AM —Mc Millen, J notices mailed 11-8-71
- 11/ 8/71 Cause is continued for a status report to November 15, 1971 at 10 AM—Mc Millen, J notices mailed 11-10-71
- 11/15/71 Cause is continued for further status report to January 3, 1972 at 10 AM—McMillen, J notices mailed 11-17-71
- 11/19/71 Filed Notice of Appeal, by the U.S. Government, from the order of the November 2, 1971
- 11/22/71 Certified and transmitted Notice of Appeal to the U.S.C. Appeals

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS

70C 673

APPLICATION OF THE UNITED STATES OF AMERICA
IN THE MATTER OF AN ORDER AUTHORIZING THE
INTERCEPTION OF WIRE COMMUNICATIONS

APPLICATION

DOUGLAS P. ROLLER, an attorney of the United States Department of Justice, being duly sworn states:

This sworn application is submitted in support of an order authorizing the interception of wire communications. This application has been submitted only after lengthy discussion concerning the necessity for such an application with various officials of the Organized Crime and Racketeering Section, Department of Justice, Washington, D. C., together with agents of the Federal Bureau of Investigation.

1. He is an "investigative or law enforcement officer—of the United States" within the meaning of Section 2510(7) of Title 18, United States Code, that is, he is an attorney authorized by law to prosecute or participate in the prosecution of offenses enumerated in Section 2516 of Title 18, United States Code.

2. Pursuant to the powers conferred on him by Section 2516 of Title 18, United States Code, the Attorney General of the United States, the Honorable John N. Mitchell, has specially designated in this proceeding the Assistant Attorney General for the Criminal Division of the Department of Justice, the Honorable Will Wilson, to authorize affiant to make this application for an order authorizing the interception of wire communications. The letter of authorization signed by the Assistant Attorney General is attached to this application as Exhibit A.

3. This application seeks authorization to intercept wire communications of Irving Kahn, Jake Jacobs and others as yet unknown concerning offenses enumerated in Section 2516 of Title 18, United States Code, that is,

offenses involving the use of interstate telephone communication facilities for the transmission of bets and betting information and in aid of a racketeering enterprise (gambling), in violation, respectively, of Sections 1084 and 1952 of Title 18, United States Code, and a conspiracy to commit such offenses in violation of Section 371 of Title 18, United States Code, which have been committed and are being committed by Irving Kahn, Jake Jacobs and others as yet unknown.

4. He has discussed all the circumstances of the above offenses with Special Agent Ray I. Shryock of the Chicago, Illinois, Office of the Federal Bureau of Investigation who has directed and conducted the investigation herein, and has examined the affidavit of Special Agent Shryock (attached to this application as Exhibit B and incorporated by reference herein) which alleges the facts therein in order to show that:

(a) there is probable cause to believe that Irving Kahn, Jake Jacobs and others as yet unknown have committed and are committing offenses involving the use of interstate telephone communication facilities for the transmission of bets and betting information and in aid of a racketeering enterprise (gambling), in violation, respectively, of Sections 1084 and 1952 of Title 18, United States Code, and are conspiring to commit such offenses in violation of Section 371 of Title 18, United States Code.

(b) there is probable cause to believe that particular wire communications of Irving Kahn, Jake Jacobs, and unknown others concerning these offenses will be obtained through the interception, authorization for which is herein applied for. In particular, these wire communications will concern the receipt and dissemination of "line" information, and the placing and accepting of bets on sporting events.

(c) normal investigative procedures reasonably appear to be unlikely to succeed and are too dangerous to be used.

(d) there is probable cause to believe that telephone numbers 675-9125 and 675-9126, located at 9126 Four Winds Way, Skokie, Ill., a private residence and subscribed to by Irving Kahn, have been used and are being used by Irving Kahn and unknown others, in connection with the commission of the above described offenses.

(e) there is probable cause to believe that telephone number 973-1833, located at 7524 North Damen, Chicago, Ill., a private residence and subscribed to by Jake Jacobs has been and is being used by Jake Jacobs and unknown others, in connection with the commission of the above described offenses.

5. No previous application has been made to any Judge for authorization to intercept or for approval of interception of wire or oral communications involving any of the same persons, facilities, or places specified herein.

WHEREFORE, your affiant believes that probable cause exists to believe that Irving Kahn, Jake Jacobs, and others as yet unknown are engaged in the commission of offenses involving the use of interstate telephone communication facilities for the transmission of bets and betting information and in the aid of a racketeering enterprise (gambling), and a conspiracy to do so; that Irving Kahn, Jake Jacobs, and others as yet unknown have used, and are using the above-described three telephones, as hereinbefore designated, in connection with the commission of the above-described offenses; that communications of Irving Kahn, Jake Jacobs, and others as yet unknown concerning these offenses will be intercepted to and from the above-described three telephones, as hereinbefore designated; and that normal investigative procedures appear unlikely to succeed and are too dangerous to be used.

On the basis of the allegations contained in this application and on the basis of the affidavit of Special Agent Ray I. Shryock, which is attached hereto and made a part hereof, affiant requests this Court to issue an order, pursuant to the power conferred on it by Section 2518

of Title 18, United States Code, authorizing the Federal Bureau of Investigation of the United States Department of Justice to intercept wire communications to and from the above-described three telephones until communications are intercepted which reveal the manner in which Irving Kahn, Jake Jacobs, and others as yet unknown participate in the illegal use of interstate telephone facilities for the transmission of bets and betting information and in aid of a racketeering enterprise (gambling), and which reveal the identities of their confederates, their places of operation, and the nature of the conspiracy involved therein, or for a period of fifteen (15) days from the date of that order, whichever is earlier.

/s/ Douglas P. Roller
DOUGLAS P. ROLLER
Special Attorney
Organized Crime and Racketeer-
ing Section, Criminal Division
United States Department of
Justice

Subscribed and sworn to before me this 20th day of
March, 1970, at Chicago, Illinois.

/s/ William J. Campbell
United States District Judge

EXHIBIT "A"**DEPARTMENT OF JUSTICE****Washington 20530****Mar. 20, 1970**

**Mr. Douglas P. Roller
Special Attorney
Chicago Strike Force
Chicago, Illinois**

Dear Mr. Roller:

This is with regard to your request to make application pursuant to the provisions of Section 2518 of Title 18, United States Code for an order of the Court authorizing the Federal Bureau of Investigation to intercept wire communications for a fifteen (15) day period to and from three telephones, two subscribed to by Irving Kahn, both located at 9126 Four Winds Way, Skokie, Illinois, and carrying telephone numbers 675-9125 and 675-9126, respectively, one telephone subscribed to by Jake Jacobs, located at 7524 North Damen, Chicago, Illinois, and carrying telephone number 973-1833, in connection with the investigation into possible violations of 18 U.S.C. 1084, 1952 and 371 by Irving Kahn, Jake Jacobs and unknown others.

I have reviewed your request and the facts and circumstances detailed therein and have determined that probable cause exists to believe that Irving Kahn, Jake Jacobs and others as yet unknown have committed and are committing offenses enumerated in Section 2516 of Title 18, United States Code, to wit: violations of Sections 1084, 1952 and 371 of Title 18, United States Code. I have further determined that there exists probable cause to believe that the above-named persons will make use of the above-described three telephones in connection with those offenses, that wire communications concerning the offenses will be intercepted, and that normal investi-

gative procedures are unlikely to succeed or are too dangerous to be used.

Accordingly, you are hereby authorized under the power specially delegated to me in this proceeding by the Attorney General of the United States, the Honorable John N. Mitchell, pursuant to the powers conferred on him by Section 2516 of Title 18, United States Code, to make application to a judge of competent jurisdiction for an order pursuant to Section 2518 of Title 18, United States Code, authorizing the Federal Bureau of Investigation to intercept wire communications from the above-described three telephones for a period of fifteen (15) days.

Sincerely,

/s/ Will Wilson
WILL WILSON
Assistant Attorney General

AFFIDAVIT

Ray I. Shryock, Special Agent, Federal Bureau of Investigation, Chicago, Illinois, being duly sworn, states:

1. I am an "investigative or law enforcement officer . . . of the United States" within the meaning of Section 2510 (7) of Title 18, United States Code—that is, an officer of the United States who is empowered by law to conduct investigations of and to make arrests for offenses enumerated in Section 2516 of Title 18, United States Code.

2. This application seeks authorization to intercept wire communications concerning offenses involving violations of Section 1084, 1952 and 371, Title 18, United States Code, which have been and are being committed by Irving Kahn and others by use of telephones subscribed to by Kahn located at 9126 Four Winds Way, Skokie, Illinois, bearing numbers 675-9125 and 675-9126, and telephone number 973-1833 subscribed to by Jake Jacobs, 7524 North Damen, Chicago, Illinois.

3. I have personally conducted the investigation of this offense, and because of my personal participation in this investigation and of reports made to me by other agents of the Federal Bureau of Investigation, I am familiar with all circumstances of the offense. Based on this familiarity, I allege the facts contained in the numbered paragraphs below to show that:

a. There is probable cause for a belief that Irving Kahn and Jake Jacobs have been and are now committing an offense involving the use of telephone communication facilities in interstate commerce with intent to carry on the offense of wagering on sports events in violation of Chapter 28 of the Illinois Revised Statutes, Article 28-1 (a) (2) (10) and also, thereby in violation of Sections 1084 and 1952, Title 18, United States Code;

b. There is probable cause for belief that wire communications concerning that offense will be obtained through the interceptions of them, authorization for which is applied for herein;

c. Normal investigative procedures reasonably appear unlikely to succeed.

d. There is probable cause to believe that telephone numbers 675-9125 and 675-9126 located at the residence of Irving Kahn, 9126 Four Winds Way, Skokie, Illinois, and telephone bearing number 973-1833 located at the residence of Jake Jacobs, 7524 North Damen, Chicago, Illinois, are being used and will be used in carrying out the offenses detailed in 3 a. above, all of which appears more fully hereafter.

4. Special Agent Dennis W. Shanahan, Federal Bureau of Investigation, advised me that based on his eight years experience investigating gambling activities he considers a lay-off operation as a procedure whereby one bookmaker turns over to another operator some of the bets he has accepted. This is generally done when a bookmaker feels he has over extended himself or when his books get out of balance because of an unusually heavy tide of betting on one particular horse or athletic team.

5. A confidential source in Illinois has been contacted by Special Agents of the FBI on a regular basis since 1964, and has furnished a considerable amount of information regarding criminal activities, including gambling, which has been corroborated through independent investigation by Special Agents of the FBI. Special Agent Paul B. Frankfurt related to me that this source has furnished information to him on gambling matters which resulted in six local gambling raids, ten individuals being arrested, and two of these individuals being convicted on gambling charges.

Special Agent Paul B. Frankfurt related to me that this source advised him on March 13, 1970, that Irving Kahn is a sports bookmaker operating from his residence at 9126 Four Winds Way, Skokie, Illinois, using telephone numbers 675-9125 and 675-9126. This source has personal knowledge that Kahn has accepted bets in the past on football, baseball, basketball, and hockey games. Kahn is presently handling basketball and hockey game bets. This source has personally placed bets with Kahn at least once a week, and as recently as March 10, 1970, he called Kahn at telephone 675-9126 and placed a bet with him.

This source further advised that Kahn related to him on December 9, 1969 that he (Kahn) and Jake Jacobs, who resides 7524 North Damen, Chicago, Illinois, telephone number 973-1833, work together in Kahn's book-making operation. Kahn's bettors contact either Kahn or Jacobs to place their bets. When Kahn is out of town or vacationing all bettors will call Jacobs, and vice-versa when Jacobs is away.

This source was and is a bookmaker in the Chicago area and has been a close associate of Kahn for past five years. He is a recipient of his information because of this association and the fact that Kahn trusts him.

The source further stated that on March 2, 1970, Kahn advised that he (Kahn) and Jacobs are taking lay-off bets from several out-of-state bettors including Joe Solutin from Anderson, Indiana. Kahn described Solutin to source as a bookmaker, who takes bets from individuals who reside in the area of Anderson, Indiana. Kahn also advised source that he (Kahn) and Jacobs either call Solutin at Anderson, Indiana, and accept his lay-off bets or Solutin will call either Kahn at Skokie, Illinois, or Jacobs at Chicago, Illinois, to place lay-off bets.

Kahn related to source on March 2, 1970, that he (Kahn) or Jacobs will either call Solutin or receive a call from him prior to game time to accept wagers (lay-off bets) and then Solutin will either call Kahn or Jacobs, or one of them will call Solutin, concerning the outcome of the game usually within a day or two after the game has been played. Kahn told source that most of the calls that are made between Kahn and Jacobs to or from Solutin are made during the weekends because during the week all three accept wagers from their respective local customers.

Kahn told source on March 2, 1970, that when Solutin receives a large amount or number of bets he (Solutin) will call either Kahn or Jacobs to lay off some of the wagers. Kahn continued by stating that if Solutin receives a small number of bets Solutin would not call either Kahn or Jacobs.

Kahn also mentioned to source on March 2, 1970, that several bookmakers call him (Kahn) from out of state

to lay off some of their bets; however, Kahn did not identify them to the source.

6. Records of the Illinois Bell Telephone Company were reviewed by Special Agent Ray I. Shryock on February 4, 1970, relative to telephone numbers 675-9126 and 675-9125 located at 9126 Four Winds Way, Skokie, Illinois, the residence of Irving Kahn. This review disclosed the following numbers in Anderson, Indiana, have been called from numbers 675-9126 and 675-9125:

<u>Day of Week</u>	<u>Date</u>	<u>Number Called</u>	<u>Length of Time</u>	<u>Time</u>
Saturday	10/ 4/69	643-5645 (Joe Solution)	10	22:03
Sunday	10/26/69	643-5645 "	8	12:25
Thursday	11/20/69	643-5645 "	12	9:45
Friday	11/21/69	643-5645 "	5	12:40
	11/26/69	644-9754 (Pastime Cigar Store)	2	11:50
	11/27/69	644-9754 "	1	13:00
Wednesday	12/ 3/69	643-5645 (Joe Solutin)	5	17:15
Saturday	12/ 6/69	643-5645 (Joe Solutin)	6	17:33
Saturday	12/20/69	643-5645 (Joe Solutin)	3	10:25
Sunday	1/11/70	643-5645 (Joe Solutin)	(Two calls)	

7. Special Agent Herbert T. Bradshaw of the FBI advised me he personally reviewed records of the Indiana Bell Telephone Company, Anderson, Indiana, and found the following long distance calls billed to telephone number 643-5645 subscribed to by Joe Solutin, 2005 West 14th Street, Anderson, Indiana:

<u>Day of Week</u>	<u>Date</u>	<u>Number Called</u>	<u>Length of Time</u>	<u>Time</u>
Sunday	9/14/69	675-9126 (Irving Kahn) Skokie, Illinois	14	14:22
Sunday	10/19/69	675-9126 Skokie, Illinois	10	16:37
Saturday	11/ 1/69	675-9126 Skokie, Illinois	6	17:31
Saturday	11/22/69	675-9126 Skokie, Illinois	7	10:54
Saturday	12/13/69	675-9126 Skokie, Illinois	13	14:20

<u>Day of Week</u>	<u>Date</u>	<u>Number Called</u>	<u>Length of Time</u>	<u>Time</u>
		Jake		
	10/25/69	973-0361 (Jacobs)	13	18:47
		Chicago, Illinois		
	10/26/69	973-0361	11	13:08
		Chicago, Illinois		
	10/27/69	973-0361	1	23:42
		Chicago, Illinois		
	11/ 1/69	973/0361	1	1:12
		Chicago, Illinois		
	11/ 3/69	973-0361	2	10:59
		Chicago, Illinois		
	11/11/69	973-0361	14	21:55
		Chicago, Illinois		
	11/25/69	973-0361	18	20:23
		Chicago, Illinois		
	11/30/69	973-0361	19	23:07
		Chicago, Illinois		
	12/ 3/69	973-0361	10	19:32
		Chicago, Illinois		

Records further indicate that Anderson, Indiana, telephone number 642-6465 is listed to John L. Zoom, 925 Main Street, Anderson, Indiana. This address is for Pastime Cigar Store. Number 644-9754 is a coin telephone listed to Pastime Cigar Store and responsible person is Harry Taylor.

It should be noted that Chicago, Illinois, telephone number 973-0361 was changed on December 5, 1969, to telephone number 973-1833. The subscriber to both of these numbers is Jake Jacobs, 7524 North Damen, Chicago, Illinois.

Special Agent Herbert T. Bradshaw of the FBI advised me that a confidential source employed by the United States Government, Anderson, Indiana, told him on December 4, 1969, that he personally knows by observation and direct contact that Joe Solutin is an employee of the Pastime Cigar Store located at 925 Main Street, Anderson, Indiana.

8. Records of the Illinois Bell Telephone Company were reviewed by Special Agent Ray I. Shryock on March 4, 1970, relative to telephone numbers 973-0361 located

at the residence of Jake Jacobs, 7524 North Damen, Chicago, Illinois. Records show this number changed to 973-1833 on December 5, 1969; however, is still listed to Jacobs at 7524 North Damen, Chicago, Illinois. This review disclosed the following numbers in Anderson, Indiana, have been called from numbers 973-0361 and 973-1833:

Day of Week	Date	Number Called	Length of Time	Time
Saturday	10/25/69	643-5645 (Joe Solutin) Anderson, Indiana	5	4:01PM
Saturday	10/25/69	643-5645	2	4:34PM
Wednesday	10/29/69	643-5645	8	7:57PM
Saturday	11/ 1/69	642-6465 (Pastime Cigar Store) Anderson, Indiana	3	2:26PM
Sunday	11/16/69	643-5645 (Joe Solutin)	9	8:11 p.m.
Sunday	11/23/69	643-5645 "	9	
Thursday	12/11/69	643-5645 "	14	7.17 p.m.
Sunday	12/21/69	643-5645 "	4	5:35 p.m.
Saturday	1/03/70	643-5645 "	1	9:10 a.m.
Saturday	1/10/70	643-5645 "	6	
Sunday	1/11/70	643-5645 "	5	2:42 p.m.
Monday	1/26/70	643-5645 "	11	8:16 p.m.

9. Another confidential source in Illinois has been contacted by Special Agents of the FBI since 1968 and has regularly furnished information regarding criminal activities on a confidential basis. The reliability of this source is based on the fact that this source has furnished information regarding gambling activities resulting in eight local raids, ten arrests, and two local convictions and one pending Federal conviction.

Special Agent Logan C. Pickerl advised me that this source told him on March 10, 1970, that Burt Kozak is a big sports bettor in the Chicago area and formerly placed sports bets with Robert Likas until Likas' arrest by Cook County Sheriff's Police on January 12, 1969. Kozak told source on March 10, 1970 that since January 1969, he, Kozak has placed most of his sports bets with Irving Kahn. Kozak further advised source on March

10, 1970, that Kahn is a bookmaker who operates from his residence at 9126 Four Winds Way, Skokie, Illinois, using telephone 675-9126, and he has personally placed bets with Kahn at this telephone number.

Source is an active bettor and both he and Kozak placed bets with Likas until his arrest. At that time both obtained different bookmakers. Kozak told source on March 10, 1970, that he is now betting with Kahn and has been since January, 1969.

10. Records of the Illinois Bell Telephone Company, Chicago, Illinois, were reviewed by Special Agent Ray I. Shryock and disclosed that 12 telephone calls were made to telephone number 272-8633 from September 27, 1969, to November 18, 1969, and charged to telephone numbers 675-9126 and 675-9125 located at the residence of Irving Kahn, 9126 Four Winds Way, Skokie, Illinois. The records also disclosed the identity and address of subscriber of this number to be:

<u>Number Called</u>	<u>Subscriber</u>	<u>Dates Called</u>
272-8633	Eurt Kozak 923 Suffield Terrace, Northbrook, Illinois	9/27/69 (2 calls); 9/29/69 10/13/69 (3 calls); 10/14/69; 11/ 6/69 (2 calls); 11/15/69 (2 calls); 11/18/69.

Illinois Bell Telephone Company records as further checked by Special Agent Ray I. Shryock disclose that Chicago, Illinois, telephone number 973-0361 was changed on December 5, 1969, to 973-1833. The subscriber to this number is Jake Jacobs, 7524 North Damen, Chicago, Illinois.

Special Agent Jerry H. Breidenfeld, FBI, advised me that Illinois Bell Telephone Company records as reviewed by him on December 18, 1969, indicate that there would be no record of calls made by Kahn to Jacobs as both reside in same toll area.

11. Another confidential source in Illinois, who is engaged in gambling activities, has been contacted by Special Agents of the FBI on a regular basis since 1963, and has furnished a considerable amount of information regarding various criminal activities, including gambling, which has been corroborated through independent investigation by Special Agents of the FBI. The reliability of this source is further based on the fact that on four occasions in the past, information furnished by him has resulted in the issuance of local warrants and complaints for search warrants. The execution of these search warrants resulted in four successful local gambling raids, the arrests of seven individuals on local gambling charges and two local gambling convictions.

Special Agent Paul J. Neumann of the FBI told me that this source related to him on February 6, 1970, that Irving Kahn is a bookmaker who operates from his residence at 9126 Four Winds Way, Skokie, Illinois, using telephone numbers 675-9126 and 675-9125.

This source meets regularly with Kahn and with other bookies, and Kahn relayed this information at one of these meetings. At a meeting on February 2, 1970, Kahn told source he was still using telephone numbers 675-9125 and 675-9126 in his gambling operation.

Source has personal knowledge that Jake Jacobs is working for Kahn in Kahn's bookmaking operation. Kahn related to source on February 2, 1970, that Jacobs accepts bets from Kahn's customers at Jacobs' residence, located at 7524 North Damen, Chicago, Illinois, using telephone number 973-1833. Source personally knows Jacobs and formerly called him for sports information at telephone number 973-0361 until early December, 1969, when this number was changed to 973-1833. Kahn further related to source that Jacobs collects for Kahn from all bettors placing wagers with Kahn and Jacobs.

The source also stated that he personally knows that Jacobs was formerly a bartender employed by Kahn at the Lakeland Lounge, 4539 North Sheridan Road, Chicago, Illinois.

12. Records of the Chicago Police Department, Record Bureau, 11th and State, Chicago, Illinois, were reviewed

by me on January 29, 1970, and disclosed that Jake Jacobs, Chicago Police Department IR number 158598 described as white male, born January 17, 1923, was arrested by the Chicago Police Department during January, 1967, for pandering with Irving Kahn. At the time of the arrest Jacobs was a bartender employed at the Lakeland Lounge, 4539 North Sheridan Road, Chicago, Illinois, which at that time was owned by Irving Kahn.

13. A survey was made by me of the telephone records for Irving Kahn, Jake Jacobs and Joe Solutin and indicate the following:

Survey of Toll Records

<u>Day</u>	<u>Date</u>	<u>Parties</u>	<u>Length of Call</u>	<u>Time</u>
Saturday	10/ 4/69	Kahn to Solutin	10	10:03 PM
Sunday	10/19/69	Solutin to Kahn	10	4:37 PM
Saturday	10/25/69	Solutin to Kahn	5	4:01 PM
Saturday	10/25/69	Solutin to Kahn	2	4:34 PM
Saturday	10/25/69	Solutin to Jacobs	13	6:47 PM
Sunday	10/26/69	Kahn to Solutin	8	12:25 PM
Sunday	10/26/69	Solutin to Jacobs	11	1:08 PM
Monday	10/27/69	Solutin to Jacobs	1	11:42 PM
Wednesday	10/29/69	Jacobs to Solutin	8	7:57 PM
Saturday	11/ 1/69	Solutin to Jacobs	1	1:12 AM
Saturday	11/ 1/69	Jacobs to (642-6465) (Pastime Cigar Store)	3	2:26 PM
Saturday	11/ 1/69	Solutin to Kahn	6	5:31 PM
Monday	11/ 3/69	Solutin to Jacobs	2	10:59 AM
Tuesday	11/11/69	Solutin to Jacobs	14	9:55 PM
Sunday	11/16/69	Jacobs to Solutin	9	8:11 PM
Thursday	11/20/69	Kahn to Solutin	12	9:45 PM
Friday	11/21/69	Kahn to Solutin	5	12:40 PM
Saturday	11/22/69	Solutin to Kahn	7	10:54 AM
Sunday	11/23/69	Jacobs to Solutin	9	
Wednesday	11/25/69	Solutin to Jacobs	18	8:23 PM

<u>Day</u>	<u>Date</u>	<u>Parties</u>	<u>Length of Call</u>	<u>Time</u>
Thursday	11/26/69	Kahn to (644-9754) (Pastime Cigar Store)	2	11:50 AM
Friday	11/27/69	Kahn to (644-9754) (Pastime Cigar Store)	11	1:00 PM
Monday	11/30/69	Solutin to Jacobs	199	11:07 PM
Wednesday	12/ 3/69	Kahn to Solutin	5	5:15 PM
Wednesday	12/ 3/69	Solutin to Jacobs	100	7:32 PM
Saturday	12/ 6/69	Kahn to Solutin	6	5:33 PM
Thursday	12/11/69	Jacobs to Solutin	144	7:17 PM
Saturday	12/13/69	Solutin to Kahn	133	2:20 PM
Saturday	12/20/69	Kahn to Solutin	33	10:25 AM
Sunday	12/21/69	Jacobs to Solutin	44	5:35 PM

14. The informants named herein have all advised they will not testify to information they have provided.

Past experience has shown even though gambling "customers" are identified they are unwilling to furnish information to law enforcement agents or officials inquiring into gambling activities. This is even more true when the "customer" is a professional gambler himself and is requested to give information concerning a gambling operation. Experience has further established that even though telephone toll records are available which indicate a person is engaged in illicit gambling, the records themselves are not sufficient to prove the gambling activities. Standard investigative techniques have succeeded and would succeed only to a limited degree in establishing that Irving Kahn and Jake Jacobs are involved in gambling activities on the telephone. Furthermore, such investigative techniques as physical surveillance and examination of the records obtainable on Irving Kahn and Jake Jacobs contain little probability of success in securing presentable evidence. Therefore, the interception of these telephone communications is the only available method of investigation which has a reasonable likelihood of securing the evidence necessary to prove violations of these statutes.

15. No other application for authorization to intercept wire or oral communications from the telephones located at the residence of Irving Kahn, 9126 Four Winds Way, Skokie, Illinois, bearing numbers 312-675-9125 and 312-675-9126 and a telephone located at the residence of Jake Jacobs, 7524 North Damen, Chicago, Illinois, having telephone number 973-1833, is known to have been made.

Based upon my knowledge and experience as a Special Agent of the Federal Bureau of Investigation in the investigation of gambling cases and my association with other Special Agents who have conducted investigations of gambling activities, normal investigative procedures reasonably appear to be unlikely to succeed in establishing that Irving Kahn and Jake Jacobs are involved in gambling activities on the telephone in violation of Federal laws. My experience and the experience of other Agents have shown that gambling raids and searches of gamblers and their gambling establishments have not in the past resulted in the gathering of physical or other evidence to prove all elements of the offenses. I have found that through my experience and the experience of other Special Agents who have worked on gambling cases, that gamblers frequently do not keep permanent records. If such records have been maintained, gamblers immediately prior to or during a physical search sometimes destroy these records. Additionally, records that have been seized in past gambling cases have generally not been sufficient to establish the interstate elements of Federal offenses, because such records are difficult to interpret and many times are of little or no significance without further knowledge of the gambler's activity and its interstate nature.

The activity to be electronically covered is believed to represent a continuing criminal conspiracy. It is further believed that the evidence sought will be obtained on a continuing basis on several days succeeding the first receipt of communications which is the object of this request. Therefore, it is requested that this intercept not terminate when the sought communications are first intercepted which reveal the manner in which Irving Kahn,

Jake Jacobs, and others as yet unknown participate in the illegal use of interstate telephone facilities for the transmission of bets and betting information and in aid of racketeering enterprises and which reveal the identities of his confederates, the places of operation and the nature of the conspiracy involved therein, or for a period of seven days from the date of the order, whichever is earlier.

/s/ Ray I. Shryock
RAY I. SHRYOCK
Special Agent
Federal Bureau of Investigation

Subscribed and sworn before me this 20th day of March, 1970.

/s/ Campbell
U. S. D. J.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS

No. 70C 673

APPLICATION OF THE UNITED STATES OF AMERICA
IN THE MATTER OF AN ORDER AUTHORIZING THE
INTERCEPTION OF WIRE COMMUNICATIONS

ORDER AUTHORIZING INTERCEPTION
OF WIRE COMMUNICATIONS

TO: Special Agents of the Federal Bureau of Investigation,
United States Department of Justice

Application under oath having been made before me by DOUGLAS P. ROLLER, an attorney with the Organized Crime and Racketeering Section of the Department of Justice, and an "investigative or law enforcement officer" as defined in Section 2510(7) of Title 18, United States Code, for an order authorizing the interception of wire communications pursuant to Section 2518 of Title 18, United States Code, and full consideration having been given to the matters set forth therein, the court finds:

(a) there is probable cause to believe that Irving Kahn, Jake Jacobs and others as yet unknown have committed and are committing offenses involving the use of interstate telephone communication facilities for the transmission of bets and betting information and in aid of a racketeering enterprise (gambling), in violation, respectively, of Sections 1084 and 1952 of Title 18, United States Code, and are conspiring to commit such offenses, in violation of Section 371 of Title 18, United States Code.

(b) there is probable cause to believe that particular wire communications of Irving Kahn, Jake Jacobs and unknown others concerning these offenses will be obtained through the interception, authorization

for which is herein applied for. In particular, these wire communications will concern the receipt and dissemination of "line" information, and the placing and accepting of bets on sporting events.

(c) normal investigative procedures reasonably appear to be unlikely to succeed and are too dangerous to be used.

(d) there is probable cause to believe that the two telephones, both located at 9126 Four Winds Way, Skokie, Illinois, a private residence, and subscribed to by Irving Kahn, and carrying telephone numbers 675-9125 and 675-9126, respectively, have been and are being used by Irving Kahn and others as yet unknown in connection with the commission of the above-described offenses.

(e) there is probable cause to believe that a telephone located at 7524 North Damen, Chicago, Illinois, a private residence, and subscribed to by Jake Jacobs, and bearing telephone number 973-1833, has been and is being used by Jake Jacobs and others as yet unknown in connection with the commission of the above-described offenses.

WHEREFORE, IT is hereby ordered that:

Special Agents of the Federal Bureau of Investigation, United States Department of Justice, are authorized, pursuant to application authorized by the Assistant Attorney General for the Criminal Division of the Department of Justice, the Honorable Will Wilson, who has been specially designated in this proceeding by the Attorney General of the United States, the Honorable John N. Mitchell, to exercise the powers conferred on the Attorney General by Section 2516 of Title 18, United States Code, to:

(a) (1) intercept wire communications of Irving Kahn and others as yet unknown concerning the above-described offenses to and from two telephones, subscribed to by Irving Kahn, both located at 9126 Four Winds Way, Skokie, Illinois, a private resi-

dence, and carrying telephone numbers 675-9125 and 675-9126, respectively.

(a) (2) intercept wire communications of Jake Jacobs and others as yet unknown concerning the above-described offenses to and from a telephone subscribed to by Jake Jacobs, located at 7524 North Damen, Chicago, Illinois, a private residence, and carrying telephone number 973-1833.

(b) such interception shall not automatically terminate when the type of communications described above in paragraph (b) have first been obtained, but shall continue until communications are intercepted which reveal the manner in which Irving Kahn, Jake Jacobs, and others as yet unknown participate in the illegal use of interstate telephone facilities for the transmission of bets and betting information and in aid of a racketeering enterprise (gambling), and which reveal the identities of their confederates, their places of operation, and the nature of the conspiracy involved therein, or for a period of fifteen (15) days from the date of this order, whichever is earlier.

PROVIDING THAT, this authorization to intercept wire communications shall be executed as soon as practicable after signing of this order and shall be conducted in such a way as to minimize the interception of communications not otherwise subject to interception under Chapter 119 of Title 18, United States Code, and must terminate upon attainment of the authorized objective or, in any event, at the end of fifteen (15) days from the date of this order.

PROVIDING ALSO, that DOUGLAS P. ROLLER shall provide the court with a report on the 5th and 10th day following the date of this order showing what progress has been made toward achievement of the authorized objective and the need for continued interception.

/s/ Campbell
Judge

Date: March 20, 1970

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS

70C 673

APPLICATION OF THE UNITED STATES OF AMERICA
IN THE MATTER OF AN ORDER AUTHORIZING THE
USE OF A PEN REGISTER

ORDER AUTHORIZING USE OF A PEN REGISTER

TO: Special Agents of the Federal Bureau of Investigation,
United States Department of Justice

Affidavit having been made before me by Ray I. Shryock, Special Agent of the Federal Bureau of Investigation, United States Department of Justice, and full consideration having been given to the matters set forth therein the court finds:

(a) there is probable cause to believe that Irving Kahn, Jake Jacobs and others as yet unknown have committed and are committing offenses involving the use of interstate telephone communication facilities for the transmission of bets and betting information and in aid of a racketeering enterprise (gambling), in violation, respectively, of Sections 1084 and 1952 of Title 18, United States Code, and are conspiring to commit such offenses in violation of Section 371 of Title 18, United States Code.

(b) there is probable cause to believe that the two telephones subscribed to by Irving Kahn, located at 9126 Four Winds Way, Skokie, Illinois, a private residence, and bearing telephone numbers 675-9125 and 675-9126, respectively, have been used and are being used by Irving Kahn, and others as yet unknown in connection with the commission of the above-described offenses.

(c) there is probable cause to believe that the telephone subscribed to by Jake Jacobs and located at

7524 North Damen, Chicago, Illinois, a private residence, and bearing telephone number 973-1833, has been and is being used by Jake Jacobs and others as yet unknown in connection with the commission of the above-described offenses.

WHEREFORE, it is hereby ordered that:

Special Agents of the Federal Bureau of Investigation, United States Department of Justice, are authorized to:

(a) install mechanical devices on the two telephones subscribed to by Irving Kahn, located at 9126 Four Winds Way, Skokie, Illinois, a private residence and bearing the telephone numbers 675-9125 and 675-9126, respectively, which will reveal the telephone numbers of all outgoing calls dialed from the above-described telephones.

(b) install a mechanical device on the telephone subscribed to by Jake Jacobs, located at 7524 North Damen, Chicago, Illinois, a private residence, and bearing telephone number 973-1833, which will reveal the telephone numbers of all outgoing calls dialed from the above-described telephone.

(c) such mechanical devices shall continue in operation until the telephone numbers of all outgoing calls dialed lead to the identities of Irving Kahn's and Jake Jacob's confederates and their places of operation, or for a period fifteen (15) days from the date of this Order, whichever is earlier.

PROVIDED THAT, this authorization to install and operate the above-described mechanical devices must terminate upon attainment of the authorized objective or, in any event, at the end of fifteen (15) days from the date of this Order.

/s/ Campbell
Judge

DATE March 20, 1970

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

SUPPRESSED
No. 70 C 673

[Filed Mar. 25, 1970].

APPLICATION OF THE UNITED STATES OF AMERICA
IN THE MATTER OF AN ORDER AUTHORIZING THE
INTERCEPTION OF WIRE COMMUNICATIONS

STATUS REPORT OF INTERCEPTION
OF WIRE COMMUNICATIONS

This report is being submitted by Douglas P. Roller, Special Attorney, Department of Justice, pursuant to court order dated March 20, 1970, authorizing the interception of wire communications at telephone numbers 675-9126, 675-9125 and 973-1833.

Installation of the interception devices on numbers 675-9126 and 675-9125 was effectuated at 5:15 P. M., Friday, March 20, 1970. Installation of the interception device on phone number 973-1833 was effectuated at 6:28 P. M., Friday, March 20, 1970.

Termination of the interception of wire communications on phone numbers 675-9126 and 675-9125 was effectuated at 2:45 P. M., Wednesday, March 25, 1970. Termination of the interception of wire communications on number 973-1833 was effectuated at 6:00 P. M., Tuesday, March 24, 1970.

Interception of wire communications on the above numbers was terminated because the authorized objective of such interception had been achieved. The objective was achieved as a result of obtaining the following information:

1. On Friday, March 20, 1970, no gambling or betting activity of any consequence occurred on any of the telephone numbers.

2. On Saturday, March 21, 1970, approximately fifty (50) calls were made to numbers 675-9126 and 675-9125, placing bets on N.C.A.A. games. These bets totalled approximately \$15,000.

3. On Saturday, March 21, 1970, Irving Kahn called his wife twice on number 675-9125 from Wilcox, Arizona and discussed gambling activities and losses.

4. On Saturday, March 21, 1970, Mrs. Kahn, on two occasions, discussed with a known gambling figure the number of bets placed, the amount of these bets and the identity of the bettors, by numbers. These conversations took place on either number 675-9126 or number 675-9125.

5. On Monday, March 23, 1970, Irving Kahn discussed the results of Saturday's betting with a known gambling figure on either telephone number 675-9126 or number 675-9125.

6. On Monday and Tuesday, March 23 and 24, 1970, Kahn told various callers that betting will resume when the baseball season arrives.

7. On Friday, March 20, 1970, Jake Jacobs called Joe Solutin on phone number 973-1833. They discussed Solutin going on vacation.

8. Joe Solutin called Jake Jacobs at number 973-1833 from Florida—once on Sunday, March 22, 1970 and once on Monday, March 23, 1970. During these calls, discussion was had concerning the whereabouts of Irving Kahn.

9. On Monday, March 23, 1970 Jake Jacobs talked to a caller on phone number 973-1833 about Kahn's gambling operation.

10. No basketball-related discussion occurred over any of the phone numbers on Tuesday, March 24, 1970.

The original tape recordings of intercepted wire communications on phone numbers 675-9126, 675-9125 and 973-1833 will be turned over to the court immediately upon completion of the copying of these tapes.

The information contained herein is accurate to the best of my knowledge. Written reports to me were made by Special Agents of the Federal Bureau of Investigation from their recall of the intercepted conversations rather than a detailed study of transcripts of the intercepted communications.

/s/ Douglas P. Roller
DOUGLAS P. ROLLER
Special Attorney
Department of Justice

IN THE UNITED STATES DISTRICT COURT

* * * (Caption—No. 71 CR 174) * * *

(Filed Feb 24 1971)

The Special February 1971 Grand Jury charges:

On or about March 21, 1970, in the Northern District of Illinois, Eastern Division, the defendants, Irving Kahn and Minnie Kahn, did use and cause to be used a facility in interstate commerce, that is, a telephone between Skokie, Illinois and Wilcox, Arizona, with the intent to promote, manage, establish and carry on and facilitate the promotion, management, establishment and carrying on of an unlawful activity, to wit, gambling, in violation of the laws of the State of Illinois, to wit, Illinois Revised Statutes, Chapter 38, Section 28-1(a), (2), and (10) and thereafter did perform acts of promotion, management, establishment and carrying on of the said unlawful activity.

In violation of Title 18, United States Code, Section 1952.

A True Bill:

/s/ Eldred H. Du Sold
Foreman

/s/ William J. Bauer
United States Attorney

LAH:lls

IN THE UNITED STATES DISTRICT COURT

• • • (Caption—Docket No. 71 CR 174) • • •

MOTION TO SUPPRESS

(Filed Apr 27 1971)

Now comes Minnie Kahn, by her attorneys, Edward J. Calihan, Jr., and Anna R. Lavin, and moves the Court to suppress any and all of her conversations illegally eavesdropped upon from her residence at 9126 Four Winds Way, Skokie, Illinois, on the grounds that:

1. They were secured without any warrant in law.
2. The said defendant Minnie Kahn incorporates by reference the matters and things set forth in the Motion to Suppress Evidence filed jointly by her and her co-defendant Irving Kahn this day.

Wherefore, this defendant moves the Court to direct the government to make answer to the allegations of this Motion, and if any made thereunder, to conduct a hearing on issues of fact, and thereafter to suppress all evidence obtained as a result of these illegal intrusions, and any leads secured therefrom, in any court and in any proceedings.

MINNIE KAHN

One of the defendants herein

By: /s/ Edward J. Calihan
EDWARD J. CALIHAN, JR.

And: /s/ Anna R. Lavin
ANNA R. LAVIN
Her Attorneys

IN THE UNITED STATES DISTRICT COURT

• • • (Caption—Docket No. 71 CR 174) • • •

MOTION TO SUPPRESS

(Filed—Apr 27 1971)

Now comes the defendants, Minnie Kahn and Irving Kahn, by their attorneys, Edward J. Calihan, Jr., and Anna R. Lavin, and represents to this Honorable Court as follows:

1. That certain property in which they have an interest; to wit: the existence and contents of telephonic communications, to and from their residence at 9126 Four Winds Way, Skokie, Illinois, have been seized from their possession in violation of law and of the Fourth and Fifth Amendments to the Constitution of the United States.
2. That these unauthorized intrusions of their privacy were, on information and belief, conducted pursuant to a purported order authorizing interception of wire communications and a purported order authorizing use of a pen register, both issued in Cause No. 70 C 673 (Application of the United States of America In The Matter of an Order Authorizing the Interception of Wire Communications In The Matter of an Order Authorizing the Use of a Pen Register) issued by The Honorable William J. Campbell, on March 20, 1970.
3. That, on information and belief, the order described in paragraph 2 above, authorizing the interception of wire communications was entered pursuant to a certain application executed by one Douglas P. Roller, described as an attorney of the United States Department of Justice, which incorporates by reference an affidavit of one Ray I. Shryock, an agent of the Federal Bureau of Investigation, requesting an order authorizing the interception of wire communications.
4. That, on information and belief, the order authorizing the use of the pen register was entered without

proper application therefor and thus, was in violation of Title 18, U.S.C., Section 2516, 2517, and 2518.

5. That, otherwise, the order authorizing interceptions of wire communications is in excess of that deemed even to be necessary by the applicant, whose application is based, not on personal knowledge, hearsay, or investigation, but upon the report of a Special Agent of the Federal Bureau of Investigation to-wit: Special Agent Shryock.

6. That the application of the United States of America for an order authorizing the interception of wire communications, which application incorporates the affidavit of Special Agent Shryock of the Federal Bureau of Investigation, is deficient and insufficient in law for the issuance of the orders described in paragraph 2 hereof on the following grounds:

A. Paragraph (c) of the authorization order reads:

"Normal investigative procedures reasonably appear to be unlikely to succeed and are too dangerous to be used."

The affidavit of Douglas P. Roller, (who was without either personal, investigative or hearsay knowledge), is in that precise language. See Paragraph 4(c).

The affidavit, however, of Agent Shryock, makes no reference to normal investigative procedures being "too dangerous to be used." It states merely (see Paragraph 3(c) thereof) as follows:

"c. Normal investigative procedures reasonably appear unlikely to succeed."

This conclusion is not founded on any factual statement in Special Agent Shryock's affidavit, and is, in fact, contrary to the factual statements in the affidavit, for the whole predicate of this statement is contained in the narrative of Paragraph 14 of the affidavit which provides:

"14. The informants named herein have all advised they will not testify to information they have provided.

"Past experience has shown even though gambling 'customers' are identified they are unwilling to furnish information to law enforcement agents or officials inquiring into gambling activities. This is even more true when the 'customer' is a professional gambler himself and is requested to give information concerning a gambling operation. Experience has further established that even though telephone toll records are available which indicate a person is engaged in illicit gambling, the records themselves are not sufficient to prove the gambling activities. Standard investigative techniques have succeeded and would succeed only to a limited degree in establishing that Irving Kahn and Jake Jacobs are involved in gambling activities on the telephone. Furthermore, such investigative techniques as physical surveillance and examination of the records obtainable on Irving Kahn and Jake Jacobs contain little probability of success in securing presentable evidence. Therefore, the interception of these telephone communications is the only available method of investigation which has a reasonable likelihood of securing the evidence necessary to prove violations of these statutes."

That the above narrative and conclusionary "justification" contained in Paragraph 14 are absolutely contradictory of the factual allegations of Agent Shryock's affidavit, to-wit:

"5. A confidential source in Illinois has been contacted by Special Agents of the FBI on a regular basis since 1964, and has furnished a considerable amount of information regarding criminal activities, including gambling, which has been corroborated through independent investi-

gation by Special Agents of the FBI. Special Agent Paul B. Frankfurt related to me that this source has furnished information to him on gambling matters which resulted in six local gambling raids, ten individuals being arrested, and two of these individuals being convicted on gambling charges.

* * * *

"9. Another confidential source in Illinois has been contacted by Special Agents of the FBI since 1968 and has regularly furnished information regarding criminal activities on a confidential basis. The reliability of this source is based on the fact that this source has furnished information regarding gambling activities resulting in eight local raids, ten arrests, and two local convictions and one pending Federal conviction.

* * * *

"11. Another confidential source in Illinois, who is engaged in gambling activities, has been contacted by Special Agents of the FBI on a regular basis since 1963, and has furnished a considerable amount of information regarding various criminal activities, including gambling, which has been corroborated through independent investigation by Special Agents of the FBI. The reliability of this source is further based on the fact that on four occasions in the past, information furnished by him has resulted in the issuance of local warrants and complaints for search warrants. The execution of these search warrants resulted in four successful local gambling raids, the arrests of seven individuals on local gambling charges and two local gambling convictions."

Therefore, there is no factual basis upon which the Magistrate could come to his own conclusion that

"Normal investigative procedures reasonably appear to be unlikely to succeed and are too dangerous to be used."

B. Further, records of the Illinois Bell Telephone Company and records of the Indiana Bell Telephone Company were reviewed and used as part of this affidavit in violation of Title 42, U.S.C., Section 605, and Title 18, U.S.C., Section 2515. (See Shryock's Affidavit Paragraphs 6, 7, 8, 10, and 13)

C. That, further, the affidavit of Special Agent Shryock seeks a continuing interception of telephone facilities over a period of seven days because the extension beyond the first sought interception will "reveal the manner in which Irving Kahn" participates in the illegal use of interstate telephone facilities for the transmission of bets and betting information; yet the order allows a continuing telephonic communication surveillance for a period of fifteen days.

D. That the order authorizing the electronic intrusion leaves to the officer executing the sole discretion on what is encompassed in the direction that the intrusion shall terminate "as soon as practicable," nor is the "attainment of the authorized objective" defined in the order authorizing the intrusion.

E. That, further, the order authorizing the intrusion does not confine the interception to the communications of Irving Kahn, but extends to "and others yet unknown". (See Sub-paragraph (a), (b), and (d) of Order and Roller Affidavit Paragraphs 3, 4, (a), (b), and (d))

That the affidavit of Agent Shryock, who was the only person having investigative, personal, or hearsay knowledge, nowhere states facts sufficient to support any probable cause that "others yet unknown" were using, for illegal purposes, the telephones at 9126 Four Winds Way, Skokie, Illinois, a private residence.

F. That the affidavit of Special Agent Shryock refers to "others as yet unknown" for the first time on Page 18, the last page of the affidavit, and then

without any factual evidence to support the statement.

That, therefore, the authorization order is the equivalent of a "general warrant", and unconstitutional and void.

G. That the orders authorizing the electronic intrusion require the filing of reports on the 5th and 10th day, and there is no indication in the knowledge of these defendants that such reports were filed, nor if filed, considered by the issuing Judge.

H. That there was no restriction on the interception from the above-described telephone facility that they shall be conducted only when it is determined by voice recognition that Irving Kahn, himself, was using that telephone. See *United States v. Escandar*, S.D.Fla., 319 F. Supp. 295, 297. In fact, the authorization contained no specific restriction at all. See Sub-paragraph F above.

I. Title 3 of the Omnibus Crime Control and Safe Streets Act of 1968, under which authority these orders presumably issued, is unconstitutional and void in that it violates the First, Fourth, and Fifth Amendments to the Constitution of the United States.

J. That the authorization of the continued surveillance after "the object to be obtained" (unspecified in application and order), is violative of Title 18, Section 2518(b) for failure to set out a "particular description of facts establishing probable cause to believe that additional communications of the same type will occur thereafter."

K. That the execution of the authorization is illegal and void in that, the United States knew, or should have known, the occupants of 9126 Four Winds Way, Skokie, Illinois, and made no request for approval of the interception of any oral communications of the members of the household other than Irving Kahn, and yet, the communications of Minnie Kahn, Pamela Kahn, and Howard Kahn were recklessly and illegally intruded upon in contravention of Title 18, Section 2518(4)(a), U.S.C., and the

First, Fourth, and Fifth Amendments to the Constitution of the United States.

L. There was no reason stated on which to form a belief that conversations, allegedly violative of Federal Law, were, or would be, lengthy or numerous, and, therefore, the authorization was in excess of power in allowing a fifteen day surveillance. *United States v. Escandar*, S.D.Fla., 319 F. Supp. at 299.

M. There were no directions nor efforts to minimize the interception of communications sought. See 319 F. Supp. at 300.

N. There was no particular description of facts showing the continuity of criminality—federally prohibited—prior to the authorization of continuous interception.

O. That the failure to require stringent safeguards, acceptance of a minimal level of "reasonable cause," authorization beyond application, and beyond grounds for application divest this intrusion of any semblance of constitutionality or legality.

P. That Title III of the Omnibus Crime Control and Safe Streets Act of 1968, which purports to authorize an unprecedented intrusion upon the privacy of the people requires a higher standards of "probable cause" than is presented by the application for the authorizations involved herein.

Q. The nature of the interceptions (which had been disclosed to the defendants) indicate that there was no continuing judicial supervision of the case, or that supervision was ineffective to the protection of constitutional rights.

R. That, further, the intrusion constitutes one, and several, illegal invasions of the marital relationship between Irving Kahn and Minnie Kahn, in violation of said defendants' right to privacy under the Ninth Amendment to the Constitution of the United States and the privilege of the marital relationship established in the common law and, therefore, the use of such communications are barred not only by the

Ninth Amendment and the common law but also by Title 18, Section 2517(4) which provides:

"No otherwise privileged wire or oral communication intercepted in accordance with, or in violation of, the provisions of this chapter shall lose its privileged character."

S. That the next preceding paragraph gains increased significance when considered with the necessary requirements to obtaining court permission to intrude, specifically a statement "as to whether or not other investigative procedures have been tried and failed or why they reasonably appear to be unlikely to succeed if tried or to be too dangerous," where direct testimony by either party of the conversations and, on information and belief, the indictment communication would be outlawed by law, and this procedure is being used to circumvent evidentiary outlawry.

Wherefore, these defendants move the Court to direct the Government to make answer to the allegations of this Motion, and if any made thereunder, to conduct a hearing on issues of fact, and thereafter to suppress all evidence obtained as a result of these illegal intrusions, and any leads secured therefrom, in any court and in any proceedings.

IRVING KAHN and MINNIE KAHN
Defendants

/s/ Edward J. Calihan, Jr.
EDWARD J. CALIHAN, JR.

and /s/ Anna R. Lavin
ANNA R. LAVIN
Their Attorneys

53 West Jackson Boulevard
Chicago, Illinois 60604
WAbash 2-3118

**UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT**

Chicago, Illinois 60604

October 31, 1972

Before

Hon. WIN G. KNOCH, Senior Circuit Judge

Hon. ROGER J. KILEY, Circuit Judge

Hon. JOHN PAUL STEVENS, Circuit Judge

No. 71-1931

UNITED STATES OF AMERICA, PLAINTIFF-APPELLANT

vs.

IRVING KAHN and MINNIE KAHN, DEFENDANTS-APPELLEES

**APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

This cause came on to be heard on the transcript of the record from the United States District Court for the Northern District of Illinois, Eastern Division, and was argued by counsel.

On consideration whereof, it is ordered and adjudged by this court that the judgment of the said District Court in this cause appealed from be, and the same is hereby, **REVERSED**, in so far as it is based upon the marital privilege ground, and is **AFFIRMED** in so far as it decided that the wiretap order did not authorize the interception of Minnie Kahn's conversations, in accordance with the opinion of this Court filed this day.

SUPREME COURT OF THE UNITED STATES

No. 72-1328

UNITED STATES, PETITIONER

v.

IRVING KAHN and MINNIE KAHN

ORDER ALLOWING CERTIORARI—Filed May 14, 1973

The petition herein for a writ of certiorari to the United States Court of Appeals for the Seventh Circuit is granted.

